IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

Consolidated Nos. 34423 & 34424

STONE BROOKE LIMITED PARTNERSHIP,
Petitioner/Appellant,

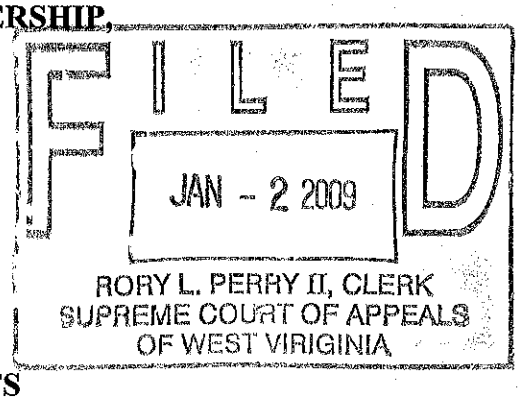
v.

PHYLLIS SISINNI, As Assessor of
Brooke County, *et al.*,
Respondents/Appellees.

HEATHERMOOR LIMITED PARTNERSHIP,
Petitioner/Appellant,

v.

JOSEPH ALONGI, as Assessor
of Hancock County, *et al.*,
Respondents/Appellees.



REPLY BRIEF OF APPELLANTS

STEPTOE & JOHNSON PLLC
Of Counsel

Amy M. Smith (W. Va. Bar No. 6454)
Chase Tower, Sixth Floor
Post Office Box 2190
Clarksburg, W. Va. 26302-2190
(304) 624-8000

STEPTOE & JOHNSON PLLC
Of Counsel

Karen E. Kahle (W. Va. Bar No. 5582)
P.O. Box 751
Wheeling, WV 26003-0751
(304) 231-0000

STEPTOE & JOHNSON PLLC
Of Counsel

J.A. Curia III (W. Va. Bar No. 10043)
Chase Tower, Eighth Floor
P.O. Box 1588
Charleston, WV 25326-1588
(304) 353-8000

Counsel for Appellants

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I. INTRODUCTION

Appellants Stone Brooke Limited Partnership ("Stone Brooke") and Heathermoor Limited Partnership ("Heathermoor") submit this reply in support of their appeal from the separate orders of the Circuit Courts of Brooke and Hancock County affirming the decisions of the County Commissions sitting as Boards of Equalization and Review and adopting their respective County Assessors' (sometimes collectively the "Assessors") cost method of appraisal for *ad valorem* tax purposes for the 2006 tax year.

Reduced to its essence, there are two issues in this case. First, whether the Circuit Courts erred in affirming the adoption of the Assessors' use of the cost method, as opposed to the income method, to value Federal Low Income Housing Tax Credit ("LIHTC") property. Second, if the County Assessors should have used the income method as Stone Brooke and Heathermoor contend, whether the LIHTCs and rent-restrictions should have been considered in the valuation of the properties. The Circuit Courts did not reach this issue although it was fully briefed below.

Stone Brooke and Heathermoor respectfully submit that the Circuit Courts erred in affirming the County Assessors' adoption of the cost method of valuing the LIHTC properties, and that error was compounded because the LIHTCs should not be considered under the income approach, while the rent-restrictions should be considered in the valuation of the properties. This approach, unlike that of the County Assessors, has significant support in both the decisions of Circuit Courts in West Virginia and appellate and trial courts in other jurisdictions. Stone Brooke and Heathermoor accordingly ask that this Court reverse the Circuit Courts' judgments and order the entry of judgments fixing the Stone Brooke and Heathermoor LIHTC properties at the values proposed by their appraiser.

II. DISCUSSION

In the area of property valuation, the Tax Commissioner, as well as each county assessor, is fundamentally bound by the statute to ascertain the "true and actual value" of all property. Such value is defined as "the price for which such property would sell if voluntarily offered for sale by the owner." W. Va. Code 11-3-1. The appraised value of commercial and industrial real property is the price at or for which the property would sell if sold to a willing buyer by a willing seller in an arms-length transaction without either the buyer or the seller being under any compulsion to buy or sell. 110 W. Va. C.S.R. § 1P-2.1.1. The Assessor is charged with using, when possible, the most accurate form of appraisal. If there is difficulty in obtaining the necessary data from the taxpayer, or a lack of comparable commercial and/or industrial properties, then the choice between alternative appraisal methods may be limited. 110 W. Va. C.S.R. § 1P-2.5.3.1 and *In Re Tax Assessment Against American Bituminous Power Partners, L.P., supra.*

A. The Circuit Courts Committed Reversible Error Because the Income Method of Appraisal is the Appropriate Appraisal Method for LIHTC Property.

The Circuit Courts erred in affirming the County Assessors' use of the cost method to value the Stone Brooke's and Heathermoor's LIHTC properties. As an initial matter, the Tax Commissioner does not dispute that a County Assessor is obligated under West Virginia law to use the most accurate appraisal method. *See In re Tax Assessment Against Am. Bituminous Power Partners*, 208 W. Va. 250, 539 S.E.2d 757, Syl. Pt. 5 (2000) ("Title 110, Series 1P [section 2.2.2.] of the West Virginia Code of State Rules confers upon the State Tax Commissioner discretion in choosing and applying the most accurate method of appraising

commercial and industrial properties").[1] There can be no doubt that the income method is the most accurate appraisal method for the LIHTC properties at issue.

Other than referencing the case governing the standard of review, the Tax Commissioner cites no authority for its proposition that the County Assessors' use of the cost approach is entitled to deference under the abuse of discretion standard. The Tax Commissioner has utterly failed to address the wealth of authority supporting Stone Brooke's and Heathermoor's position that the cost method to value LIHTC property should not be employed. *See e.g., In re Weaver Inv. Co.*, 598 S.E.2d 591, 594 (N.C. Ct. App. 2004) ("By rejecting the income approach [in favor of the cost approach], the County failed to use the 'most reliable' method of valuation[.]"); *Cascade Court Ltd. P'ship v. Noble,* 20 P.3d 997, 1002 n.33 (Wash. Ct. App. 2001) ("the appraisal literature and case law regarding rent-restricted low-income housing argue against the use of the cost method."); *Pinelake Hous. Coop. v. Ann Arbor,* 406 N.W.2d 832, 839 (Mich. Ct. App. 1987) ("a cost approach to valuation is generally an inappropriate method to value low-income, government-subsidized housing projects.")

Moreover, at least three West Virginia Circuit Courts have concluded that County Assessors should use the income approach, not the cost approach, when valuing LIHTC property. *In re: 1994 Prop. Tax Assessment of Twin Oaks Plaza,* Civil Action No. 94-C-78 (Fayette Cty., W. Va. Feb. 8, 1999) ("the income approach to appraising the [LIHTC] property is an appropriate, realistic, accurate, fair and correct method . . . [c]onversely the employment of the cost approach does not . . . arrive at the true and actual value[.]); *Pine Haven Ltd. P'ship v. Assessor of Cabell County*, Civil Action Nos. 08-C-223-25 (Cabell Cty., W. Va. Nov. 12, 2008)

[1]Although some discretion may be conferred upon the County Assessors in choosing a valuation methodology, as more fully set forth in this section, the Tax Commissioner's seeming suggestion that a County Assessor has carte blanche discretion to choose a valuation methodology that is inconsistent with West Virginia law is without merit.

(attached hereto as Ex. A) (observing that in light of the Taxpayer Appraiser's testimony, case law from other jurisdictions and the *Providence Green* and *Twin Oaks* decisions from sister Circuit Courts in West Virginia, the Taxpayers "clearly demonstrated that the income approach is the proper method for valuing Low Income Housing Tax Credit properties"); *Providence Green, LLC v. Assessor of Ohio County*, Civil Action Nos. 07-CAP-7, 14 (Ohio Cty., W. Va. Apr. 22, 2008) (attached hereto as Ex. B) (Assessor, Taxpayer and court agreeing that the income approach was appropriate when valuing LIHTC property).[2]

There is also concrete evidence of record suggesting that the utilization of the cost approach was in error. Oddly, the Tax Commissioner posits in a footnote that the Hancock County Assessor's acknowledgement during the hearing that the cost approach "may not be the most appropriate" is of no consequence. (Stone Brooke Hr.'g Tr. 26, Feb. 14, 2006; Brief 5 at n. 5.) Contrary to the Tax Commissioner's suggestion, the Assessor's express admission that the cost approach "may not be the most appropriate" is germane to the analysis. While there is some discretion in assessing the methodology, the West Virginia Code of State Rules mandates that the most accurate method of appraisal be used. *See In re Tax Assessment Against Am. Bituminous Power Partners*, 208 W. Va. 250, 539 S.E.2d 757, Syl. Pt. 5 (2000) ("Title 110, Series 1P [section 2.2.2.] of the West Virginia Code of State Rules confers upon the State Tax Commissioner discretion in choosing and applying the most accurate method of appraising

[2]As noted in the Brief of Appellants, *Shepherds Glen Ltd. P'ship. v. Bordier*, Civil Action No. 03-C-71 (Jefferson Cty., W. Va. Sept. 22, 2003), a case cited in the Circuit Court's opinions, suggests at first blush that the income method is not favored when valuing LIHTC properties. That case, however, is factually distinguishable. There, the Circuit Court held only that the income method of appraisal is not necessary "where 'economic rent' data is not available to the assessor." *Id.* at ¶ 15. In this action on the other hand, adequate economic rent data was available. Accordingly, *Shepherds Glen Ltd. P'ship.* lends no support to the Circuit Court's rationale.

commercial and industrial properties"). The record thus reflects one County Assessor's admission that the most accurate method of appraisal was not used.[3]

There is further evidence of record from the Tax Commissioner's Appraiser tending to show that the Assessors abused their discretion. It is undisputed that the Tax Commissioner's Appraiser conducted appraisals of the Stone Brooke and Heathermoor LIHTC properties, his appraisals used the income approach, and the appraisals did not employ the cost approach. Nevertheless, the Tax Commissioner has refused to concede that the cost approach to valuation is an improper methodology when applied to LIHTC properties.

A review of the discussion authored by the Tax Commissioner's Appraiser on the valuation of both the Stone Brooke and Heathermoor LIHTC properties is helpful. Those discussions provided in pertinent part:

> The [West Virginia] Property Tax Division has always, a matter of policy [sic], maintained that *all income*, both direct and indirect, derived from the ownership of an investment property *be considered in its valuation.* This policy had been driven by appraisal standards as well as the West Virginia Tax Code, and has been consistently supported . . .
>
> In the case of Subsidized housing (whether it be HUD Section 8, FHMA 515, IRS Section 42, or others), all income associated with the property *must be considered* an integral part of the benefit of ownership.

(Goff Discussions on Valuation at 1.) (emphasis supplied). Also of note, absent from the Tax Appraiser's "Considerations in valuation of parcel" explanation in his discussions of the value is any reference to the cost of the LIHTC properties. (*Id.* at 2.) [4]

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[3] The Hancock County Assessor explained that the valuation "numbers are supported by some rational approach to value." (Stone Brooke Hr.'g Tr. 26, Feb. 14, 2006.) This statement reflects a fundamental misunderstanding of West Virginia law. As previously noted, an Assessor is charged with "applying the most accurate method of apprais[al]."

[4] The Tax Commissioner maintains that support for the Brooke County Assessor's valuation can be found in the fact that amount of fire insurance on the Stone Brooke property

The Tax Commissioner now apparently seeks to distance himself from his Appraiser's analysis regarding the valuation of the Stone Brooke and Heathermoor properties; however, nowhere in the record below did this Appraiser ever disavow his opinions. Moreover, the Tax Commissioner's contention in this appeal that his Appraiser simply did not conduct a cost analysis because one has already been performed by the respective County Assessors appears disingenuous in light of the plain language of the Tax Commissioner Appraiser's reports which indicate that he was bound to apply the income method under the Property Tax Division's policies.

In his response brief, the Tax Commissioner addresses the Stone Brooke appraisal and repeatedly observes that the Tax Commissioner Appraiser's and the Brooke County Assessor's appraisals are not separated by a significant margin. This discussion appears to suggest that the Brooke Assessor's decision is entitled to deference simply because it is relatively close to the Tax Commissioner Appraiser's valuation. Notably absent from the Tax Commissioner's discussion on this point is the mention of the Hancock County Assessor's wildly divergent Heathermoor appraisal, which is over $1,000,000 in excess of the Tax Commissioner's appraisal and $2,687,500 in excess of Heathermoor's appraisal. In any event, the proximity of the County Assessor's and Tax Commissioner's appraisals on the Stone Brooke LIHTC property is irrelevant as they both employed the flawed cost methodology.

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exceeds the value placed on the property by the Assessor. As Stone Brooke and Heathermoor have asserted throughout this litigation, the cost to construct a LIHTC property, either initially or after a fire, is not a proper valuation method. Additionally, under Internal Revenue Code Section 42(j)(4)(E), if the LIHTC property suffers a casualty loss, such as a fire, it must be reconstructed or face recapture of the allocated tax credits. Thus, to avoid the recapture of the tax credits the LIHTC property would have to be rebuilt -- subject to the same rent restrictions that reduce the LIHTC properties' market value. Finally, it is again worthy of mention that in the Tax Commissioner Appraiser's "Considerations of Value" nowhere is the fire replacement cost of Stone Brooke mentioned as a factor considered in arriving at the property's value.

In lieu of any substantive discussion of authority from West Virginia or other jurisdictions on the propriety of employing the cost methodology when valuing LIHTC property, the Tax Commissioner instead offers the mere appellate incantations that a County Assessor has discretion to determine the methodology that will be employed in the valuation of a LIHTC property, this decision is entitled to deference, and a taxpayer challenging an appraisal faces a high evidentiary burden. A recent decision from Judge Pancake in the Sixth Judicial Circuit is instructive when addressing these oft-cited mantras.

In *Pine Haven Limited Partnership,* the owners of three LIHTC multi-apartment residential properties challenged the Assessor's appraised values, which ranged from $2,017,000.00 to $3,015,000.00. *Id.* at 3. The Assessor's appraised values were based on the cost approach, and he also used an income approach to "back it up." Like the Tax Commissioner here, the Assessor simply "continually f[e]ll back on the position that 'the general rule is that valuation for taxation purposes are presumed to be correct.'" *Id.* at 12 (*quoting In Re Tax Assessment Against American Bituminous Power Partners, L.P.*) Judge Pancake observed that this general proposition did not somehow absolve the Assessor of proving his appraisals are correct when presented with evidence to the contrary. *Id.* (*citing In re Tax Assessments Against Pocahontas Land Co.*, 303 S.E.2d 691, 699-700 (W.Va. 1983)). He went on to hold that the Assessor's cost method of appraising the LIHTC property was not supported by substantial evidence. *Id.*

Here, as in *Pine Haven*, there is ample evidence demonstrating that the income method should have been employed and the Tax Commissioner cannot refute this evidence on this record. Stone Brooke and Heathermoor's Appraiser, West Virginia Circuit Courts, and other appellate and trial court have all concluded that the only valid method of appraising LIHTC

property is the income method. Indeed, evidence of record suggests that the West Virginia Tax Commissioner's Appraiser and at least one county assessor have at least tacitly, if not explicitly, acknowledged as much.

B. The Circuit Courts Should Have Held that the LIHTCs Should be Excluded and Rent Restrictions Should Be Considered in the Valuation Process.

1. LIHTCS should be excluded from an LIHTC property valuation under the income method.

LIHTCs are intangible personal property and such property is not taxable under West Virginia law. W. Va. Code § 11-1C-1b. While there is admittedly a split of authority on the question, "[c]ourts in other states have found tax credits created by the LIHTC program to constitute intangible property." *Holly Ridge Ltd. P'ship v. Pritchett,* 936 So. 2d 694, 699 n.4 (Fla. Dist. Ct. App. 5th Dist. 2006) (citations omitted); *Cottonwood Affordable Hous. v. Yavapai County,* 72 P.3d 357 (Ariz. Tax Ct. 2003); *Maryville Props., L.P. v. Nelson,* 83 S.W.3d 608 (Mo. Ct. App. 2002); *Cascade Court Ltd. P'ship. v. Noble,* 20 P.3d 997 (Wash. Ct. App. 2001).

The Tax Commissioner's opposing view is based in large part on the assumption that LIHTCs like "real estate's view and zoning are inherent features of a property" and should be included in an income method valuation of LIHTC property. At least one Court has explicitly rejected that position observing that:

> Zoning and location, however, are characteristics of the property itself, not characteristics of the owners of the property. Likewise, just as with a below market lease or a tax abatement, zoning and location have a direct effect on the income or income producing potential of the property regardless of the identity or characteristics of the individual owner. LIHTCs are not characteristics of the property. Rather they are assets having direct monetary value. Their restricted transferability does not destroy their essential status as intangible property having value primarily to their owner. Objective standards should be used for determining fair market value in the market place. The particular circumstances of the owner are not a proper consideration.

Maryville Props., 83 S.W.3d at 616. It is likewise for these very reasons that the superior approach to valuing LIHTC property under the income method is to exclude the LIHTCs from consideration.

It is also worthy of mention that the Appraisal Institute's Uniform Standards of Professional Appraisal Practice ("USPAP"), which governs the conduct of certified appraisers throughout the United States, recognizes that "LIHTCs are an example of an incentive that results in intangible property rights." USPAP Advisory Opinion 14. At least one tax court has concluded that these standards are entitled to "strong deference." *Cottonwood.*, 72 P.3d at 359.

Also of note, in support of his position that the value of LIHTCs should be included in an income method appraisal, the Tax Commissioner cites both *Spring Hill, L.P. v. Tennessee State Bd. of Equalization,* Docket No. M2001-02683-COA-R3-CV, 2003 WL 23099679 (Tenn. App. Dec. 31, 2003), and *Town Square L.P. v. Clay Co. Bd. of Equalization,*704 N.W.2d 896 (S.D. 2005). In his response brief, The Tax Commissioner recognizes that the *Town Square* decision is of limited value as South Dakota, unlike West Virginia, does not have a statutory provision that expressly prohibits the taxation of intangible personal property. The Tax Commissioner, however, failed to acknowledge that the *Spring Hill* decision is similarly limited insofar as Tennessee, unlike West Virginia, does not have a statutory exemption for intangible personal property.[5]

The Tax Commissioner further references the hearing testimony from Heathermoor's appraiser that "you wouldn't build this [referring to the apartment complex] if these are the only rents [referring to the rent restricted rents] that you could get." According to the Tax Commissioner, this statement is "directly at odds" with the position that the value of the LIHTCs

[5] It should be noted further that the income method of appraisal was used with approval in *Spring Hill.*

should not be included in the appraisal. The Tax Commissioner further contends that "[a]dditional support of the inclusion of some value regarding the investment credits" can be found in the appraiser's testimony that credits were used to create the necessary start-up capital for the project. Stone Brooke and Heathermoor address these contentions in turn.

First, their appraiser's assertion that these properties would not have been built, but for the LIHTCs was part of his explanation for why the cost approach and market data approach were discarded in favor of the income method. As Stone Brooke's and Heathermoor's Appraiser testified,

> And, again, the cost approach, looking at it from a cost standpoint, when you see these rents and you see this value, the cost is much higher. And you wouldn't build this if these are the only rents that you could get. So the cost approach wasn't a value – wasn't an approach that we utilized. And there were no sales with these types of properties in West Virginia that are comparable. So we felt the income approach was the only true approach to utilize.

(Hr.'g Tr. 12, Feb. 14, 2006.) Thus, the hearing testimony, when properly viewed in context, can hardly be construed as an admission that the value of the LIHTCs should be included in an income method appraisal of the Stone Brooke and Heathermoor properties.

Second, the Tax Commissioner's assertion that "[a]dditional support of the inclusion of some value regarding the investment credits" can be found in their appraiser's testimony that the LIHTCs were used to create the necessary start-up capital for the project. This argument misses the point. It is undisputed that the credits are used to create the initial capital for LIHTC property. *See* Adam McNeely, *Improving Low Income Housing: Eliminating the Conflict Between Property Taxes and the LIHTC Program*, 15 J. Affordable Hous. & Cmty. Dev. L. 324, 325 (2006) (recognizing that under the LIHTC a developer sells the credits to investors in return for capital to pay for the project). The salient issue is whether these credits are properly considered under the income method of appraisal. The appraiser testified, consistent with Stone

Brooke's and Heathermoor's arguments throughout this litigation, that the LIHTCs should not be considered in the income methodology because they are intangible property. (Stone Brooke Hr.'g Tr. 16, Feb. 14, 2006.) Accordingly, the Tax Commissioner's response offers nothing to alter the conclusion that the LIHTCs should not be considered under the income methodology.

2. Stone Brooke and Heathermoor's Contention That the Restricted Rents, Rather than the Market Based Rents Should Be Considered Under the Income Approach Stands Unrefuted.

In his response brief, the Tax Commissioner acknowledges that both his appraiser and the Stone Brooke and Heathermoor appraiser used the restricted rents as opposed to the fair market rents when applying the income method to the valuation of the LIHTC properties. Indeed, the Tax Commissioner does not even advance an argument that market based rents should be considered under the income approach to valuing LIHTC property.

Although this issue appears to be conceded, it is worth noting that other courts have concluded that restricted rents should be employed in the income approach to valuing LIHTC property. As the Court observed in *Metro. Holding Co. v. Bd. of Review,* 495 N.W.2d 314, 316-17 (Wis. 1993):

> In using estimated market rents and expenses, the city assessor essentially pretended that Layton Garden was not hindered by the HUD restrictions and valued the property at the amount the property would bring in an arm's-length transaction if Metropolitan were able to charge market rents. Layton Garden was, however, hindered by the HUD restrictions and it is undisputed that the HUD restrictions precluded Metropolitan from charging market rents. In fact, the city assessor admitted that Metropolitan could not have realized the assessed amount from a private sale in 1988. Furthermore, The Board's counsel conceded, during oral argument, that she would pay less for a building encumbered with HUD restrictions than she would for an otherwise identical building that was not encumbered with HUD restrictions. The city assessor's use of estimated market rents violated sec. 70.32(1), because the estimated market rents did not reflect the true market value of Layton Garden.

See also Maryville Props. v. Nelson 83 S.W.3d 608 (Mo. Ct. App. 2002) (restricted rents must be taken into account); *Greenfield Vill. Apartments, L.P. v. Ada County*, 938 P.2d 1245 (Idaho

1997) (LIHTC property valuation should take into consider restrictions on rent). Furthermore, at least one West Virginia Circuit Court also appears to be in agreement that the restricted rents, rather than the market rents, should be used when valuing the LIHTC properties. *Pine Haven Ltd. P'ship.* ("restricted rents should have been used in the income approach [to valuing the LIHTC property]").[6]

In any event and regardless of the law in other jurisdictions, on the record before this Court, the Tax Commissioner could not assert that market-based rents as opposed to the actual restricted rents should be used as that argument is nowhere to be found in the record. There is simply no evidence of record to refute the testimony of the Appraiser for Stone Brooke and Heathermoor that restricted rents should be employed under the income method of valuation. *See Pine Haven Ltd. P'ship.* (Assessor and County Commission "offered no argument in their response brief that would lead one to the opposite conclusion [that market rents should be employed when valuing LIHTC property], nor did the transcript from the February 19 and 22, 2008 hearings contain any compelling evidence or arguments which would contradict the [Taxpayer]'s position that restricted rents are the best way to value the properties")

C. The Tax Commissioner's Concerns that this Court Will Invade the Province of the Legislative and Executive Branches are Misplaced.

Although the Tax Commissioner suggests otherwise, this Court, like the West Virginia Circuit Courts mentioned above, can simply apply existing statutory and case law and need not be concerned about infringing on the policy prerogatives of the legislative and executive branches of our state government. Indeed, our state legislature has already indicated that it is in

[6] As for *In re: 1994 Prop. Tax Assessment of Twin Oaks Plaza*, Civil Action No. 94-C-78 (Fayette Cty., W. Va. Feb. 8, 1999), in that case market based rents were used in the income approach to valuing the LIHTC property at issue. The question of market vs. restricted rents, however, was not before the Circuit Court as the LIHTC property's appraiser used market based rents as opposed to the restricted rents.

agreement with the positions advocated by Stone Brooke and Heathermoor. Specifically, the West Virginia Legislature passed Senate Bill 696, which addressed the appraisal of "affordable multifamily rental housing property" and mandated that county assessors (1) use the income method of valuation, (2) take into consideration "[t]he rents and impact of rent restrictions applicable to the property," and (3) disregard state and federal tax credits when performing the income method. Proposed Legislation W.Va. Code § 11-3-1(c). As the Tax Commissioner correctly observes, this bill was ultimately vetoed by Governor Manchin. The Tax Commissioner, however, did not mention that the governor vetoed the bill not because of any policy concerns, but because of a perceived difficulty in the application of the statute.[7]

It is peculiar for the State Tax Department to urge this Court to exercise restraint and defer to the better judgment of our state legislative and executive branches when it is advancing positions to this Court that are directly contrary to legislation that passed both chambers and was ultimately vetoed solely on technical concerns. Moreover, the State Tax Department had an opportunity to participate in the passage of Senate Bill 696 -- the fiscal notes for this bill [apparently a "one-size fits all" law that the Department believes is undesirable, but the constitutional mandate of tax uniformity requires] indicate that the Department could not

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[7]Governor Manchin's veto of Senate Bill 696 stated in pertinent part,

> [T]he bill does not explicitly address how a property for which only a portion of which is dedicated to "affordable rental housing" is to be valued. Although the bill suggests that only those portions of the property so dedicated should be valued under the "income method", the bill fails to provide sufficient guidance to assessors in applying this new rule -- particularly in light of the turnover in rental housing units, which could alter the makeup of an individual piece of property several times over the course of a single tax year. As a result, these new provisions would be exceedingly difficult for county assessors to administer and enforce on a consistent basis.

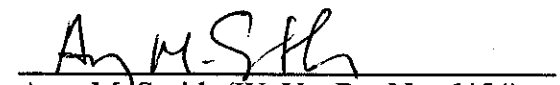
Gov. Manchin's March 31, 2008 veto. Of note, the Governor's concerns about the turnover of rental housing units creating difficulty for county assessors are not present here, since all of Stone Brooke's and Heathermoor's residential units are LIHTC units.

determine the loss of revenue or the administrative cost to the state and local government if the bill were adopted. In any event, it bears repeating that notwithstanding the absence of a statute directly on point, this Court can apply existing law to reach the result urged upon it by Stone Brooke and Heathermoor. Indeed, doing so is consistent with the general policy promoting housing assistance inasmuch as it prevents local government from undermining the federally created LIHTC program through excessive taxation.

III. CONCLUSION

For all of the foregoing reasons, this Court should reverse the judgments of the Circuit Courts and direct the entry of judgments fixing the values of the Stone Brooke and Heathermoor LIHTC properties at the values proposed by their Appraiser using the income method.

Dated this 2nd day of January, 2009.



Amy M. Smith (W. Va. Bar No. 6454)
Chase Tower, Sixth Floor
Post Office Box 2190
Clarksburg, W. Va. 26302-2190
(304) 624-8000

STEPTOE & JOHNSON PLLC
Of Counsel

Karen E. Kahle (W. Va. Bar No. 5582)
P.O. Box 751
Wheeling, WV 26003-0751
(304) 233-0000

STEPTOE & JOHNSON PLLC
Of Counsel

Joseph A. Curia III (WV Bar No. 10043)
Chase Tower, Eighth Floor
P.O. Box 1588
Charleston, WV 25326-1588
(304) 353-8000

STEPTOE & JOHNSON PLLC
Of Counsel

Counsel for Appellants

CERTIFICATE OF SERVICE

I hereby certify that on the 2nd day of January, 2009, I caused to be served the foregoing "Reply Brief of Appellants" upon the following counsel of record by depositing true copies thereof in the United States mail, postage prepaid, in envelopes addressed as follows:

A. M. "Fenway" Pollock
Deputy Attorney General
Building 1, Room W-435
1900 Kanawha Blvd., East
Charleston, WV 25305-0220

David B. Cross
Prosecuting Attorney of Brooke County
727 Charles Street
Wellsburg, WV 26070

James W. Davis, Jr.
Prosecuting Attorney of Hancock County
P.O. Box 924
New Cumberland, WV 26047